IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1381 of 1999

in

SPECIAL CIVIL APPLICATIONNo 1811 of 1998

with
CIVIL APPLICATION NO. 12345 OF 1999

For Approval and Signature:

Hon'ble MR JUSTICE C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRA NAGJIBHAI TAILOR

Versus

LUPIN LABORATORIES LTD.

Appearance:
MR NAVIN K PAHWA for Appellants
NANAVATI ASSOCIATES for Respondent No. 1

CORAM : MR JUSTICE C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: /01/2000

CAV JUDGEMENT

Per Thakker, Actg. C.J:

This appeal is filed against dismissal of Special Civil Application No. 1811 of 1998 by the learned Single Judge on September 10, 1999.

The appellant was one of the petitioners in SCA No. 1811 of 1999. He and one Navinchandra Vasava were employees in Lupin Laboratories Limited, Ankleshwar. They were alleged to have stolen property of the company viz. one litre of Machine oil, worth Rs. 15/- . It was the case of the company that a can of the machine oil was recovered from the dickey of the motor cycle of the appellant where another employee, Mr.Vasava was the pillion rider. It was recovered from the employees from the precincts of the company. A departmental inquiry was held against both of them, they were found guilty and the charge was held proved. Both of them were, therefore, dismissed from service.

Feeling aggrieved by the said action, the employees raised an industrial dispute and in Reference (LCB) No. 24 of 1992, the Labour Court, Bharuch dismissed the Reference by an award dated November 20, 1997. The Labour Court held that inquiry held against the employees was legal and valid and charge was proved. On independent examination of the record also, the Labour Court held that the guilt was established. No relief was,therefore, granted by the Labour Court.

Being aggrieved by the said award, the employees approached this court by filing SCA No. 1811 of 198 which also came to be dismissed by the learned Single Judge.

One of the appellants i.e. petitioner No.1 of SCA has filed the present LPA.

We have heard Mrs Pahwa, learned counsel for the appellant and Mr K.S.Nanavati ,learned counsel for Nanavati Associates for the respondent.

Mrs. Pahwa for the appellant contended that the case is of "no evidence". Even if it is established that the incident in question had taken place, the charge was proved only against Mr. Vasava who is said to have put a

can of machine oil in the dickey of the scooter of the appellant. There is no evidence worth the name against the appellant and hence, he could not have been punished or penalised. She also contended that even if it is assumed for the sake of argument that the appellant noticed that the can was placed in the dickey of his scooter, it cannot be said that the appellant had committed theft of the property of the company. Finally, she submitted that even if the charge levelled against the appellant was proved, he could not have been visited with extreme penalty of dismissal from service. The charge could not be said to be so grave as to warrant economic death penalty on the workman. The amount of the property was worth Rs. 15/- . Again, the appellant was not holding any sensitive post of trust and by taking undue advantage of that position, he had not committed misconduct in question,

Our attention, in this connection, was invited by the learned counsel to the provisions of Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Strong reliance was also placed on a decision of the Division Bench of this court in R.N.Parmar vs. Gujarat Electricity Board, 1982 GLH 254. In that case, the court was called upon to consider the legality of an order of dismissal passed against an employee in the light of the provisions of Section 11A of the Act. The Division Bench highlighted certain factors which require to be borne in mind while exercising powers under Section 11A of the Act. The court also laid down certain principles. In para 7 of the reported decision, the court observed that the matter regarding imposition of penalty on an employee cannot be left solely to the discretion of the management even after he is found guilty .

Regarding pilferage of petty articles by a worker in a moment of weakness, the employer should not be too harsh to impose on him extreme penalty of dismissal. The court observed :

> "Taking of a petty article by a worker in a moment of weakness when he yields to a temporization does not call for an extreme penalty of dismissal from service. More particularly when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instance, may be viewed with seriousness) . A worker brought up and living in an atmosphere of

> poverty and want when faced with temptation, ought not to,but may, yield to it in a moment of weakness. It cannot be approved but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity. (And even tax evasion or possession of black money is not considered to be a dishonourable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temporization and commits an offence which often passes under the honourable name of cleptomania when committed by the rich."

Our attention was also invited to the following decisions:

(1) R.N.Parmar vs. Gujarat Electricity Board,
1982 GLH 254;
(2) Seeralan vs. Presiding Officer II, and ors
(1986) 2 LLJ 85
(3) M .K.Ravi vs. Managing Director,KSB Corporation
1987 LIC 355
(4) GSRTC vs.K.M.Parmar
(34) 1 GLR 302
(5) Sanjay Gupta vs State of U.P. and others
(1996) LIC 2254 (Raj)
(6) Haripada Khan vs. Union of India,
(1996) LIC 934 (SC).

Ms.Pahwa ,therefore, submitted that even if this court agrees with the finding recorded by the management, the order of dismissal of the appellant from service deserves to be interfered with by imposing lesser penalty.

Mr. Nanavati,on the other hand, submitted that on appreciation of evidence, findings of fact have been recorded by the Labour Court that domestic inquiry was conducted against the appellant wherein he was given full opportunity to defend the case. The inquiry was legal and valid wherein it was proved that the appellant had committed theft of property of the company. The finding was based on evidence. The Labour Court held that the inquiry was conducted in accordance with law and was not

vitiated and dismissed the Reference. The learned Single Judge agreed with the finding recorded by the Labour court. Not only that, but the learned Single Judge again considered the evidence and agreed with the view taken by the Labour Court. Imposition of penalty is the discretion of employer and ordinarily in exercise of extraordinary powers under Article 226/227 of the Constitution, this court does not interfere with such finding by substituting its own opinion for the opinion of the employer. The provisions of Section 11A of the Act could not be invoked in the instant case as it cannot be said that the punishment was not justified or that it was grossly excessive and disproportionately high so as to interfere with the same in the light of misconduct committed by the employee. According to him, the value of the property is not relevant in such cases. Once it is established that theft was committed by an employee, an order of dismissal cannot be termed as arbitrary or unlawful.

In the facts and circumstances of the case, in our opinion, neither the Labour Court nor the learned Single Judge can be said to have committed any error of law and/or jurisdiction and the impugned decision does not require interference.

At the conclusion of domestic inquiry held against the appellant, which was found to be legal, proper and valid, a charge levelled against the appellant as also against Mr. Vasava was held proved. It related to theft of the property of the company. The Labour court, after considering the facts and circumstances and after referring to several decisions of the Supreme Court as well as other courts, held that the punishment imposed on the appellant could not be said to be disproportionate . The learned Single Judge agreed with the view taken by the Labour court and dismissed the petition.

We are in agreement with the view taken by the Labour court as well as the learned Single Judge. In our opinion, it cannot be said that by dismissing the Reference and the petition, either Labour Court or the learned Single Judge has committed any error of law apparent on the face of record which requires interference by us. LPA, therefore, deserves to be dismissed and is accordingly dismissed. No costs. No order on civil application.

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